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**PROGRAMMATIC AGREEMENT
BETWEEN THE
U.S.D.I. BUREAU OF LAND MANAGEMENT, CEDAR CITY FIELD OFFICE;
U.S.D.A. FOREST SERVICE, FISHLAKE NATIONAL FOREST;
AND UTAH STATE HISTORIC PRESERVATION OFFICER
REGARDING
THE ENEL COVE FORT PROJECT**

WHEREAS, the Bureau of Land Management, Cedar City Field Office (BLM) has received a Plan of Utilization (POU) filed by Enel Cove Fort, LLC (hereafter "Enel") to utilize Federal lands for geothermal development for the purpose of energy production next to Sulphurdale, Utah (hereafter "Project"); and

WHEREAS, the BLM is the lead Federal land management agency responsible for receiving and processing applications for geothermal resource development, exploration and utilization pursuant to 43 CFR 3200 series, Utilization of Geothermal Resources, and for establishing multiple uses of federal lands in providing for present and future generations as authorized by the Federal Land Policy and Management Act (FLPMA) of 1976 (43 USC 1701 et seq.); and

WHEREAS, the BLM is the lead federal agency for compliance with Section 106 of the National Historic Preservation Act (NHPA), 16 USC § 470, and its implementing regulations, 36 CFR Part 800, and has determined that the Project is a Federal undertaking that may have an effect on historic properties; and

WHEREAS, the Project is located on lands administered by the United States Forest Service, Fishlake National Forest (USFS), which will consider issuance of a Special Use Authorization for this Project pursuant to 36 CFR § 251; and the USFS has therefore been consulted and included as a Signatory to this Agreement; and

WHEREAS, BLM, in consultation with the Utah State Historic Preservation Officer (SHPO), has agreed to develop a Programmatic Agreement (hereafter "Agreement") pursuant to 36 CFR 800. 4(b)(2) for the consideration of a phased identification and evaluation process; and

WHEREAS, Federal agencies consult with the SHPO to ensure that historic properties are taken into consideration at all levels of project planning and development for undertakings that may affect historic properties pursuant to 36 CFR 800.2(c)(1); and

WHEREAS, BLM is responsible for government-to-government consultation with federally recognized Indian Tribes for this undertaking and is the lead Federal Agency for all Native American consultation and coordination, and has formally invited the Indian Tribes to participate in consultation, and continue to be consulted regarding the potential effects of the Project on historic properties pursuant to 36 CFR 800.2(c)(2); and

WHEREAS, the BLM will provide an opportunity for American Indian Tribes (described in Appendix A) to participate in the identification of concerns and evaluation historic properties

including those of cultural importance pursuant to 36 CFR 800.2 (2)(A) and to be Consulting Parties to this Agreement; and

WHEREAS, the Advisory Council on Historic Preservation (ACHP) has elected not to participate in the consultation process for this Project under 36 CFR 800.2(b)(1); and

WHEREAS, Enel has participated in consultation and has been invited to be a Invited Signatory to this Agreement pursuant to 36 CFR 800.2(c)(4); and

WHEREAS, as a representative of a local government the Office of the Governor, Public Lands Policy Coordination Office has been invited to be Consulting Party to this Agreement pursuant to 36 CFR 800.2(c)(3); and

WHEREAS, unless defined differently in this Agreement, all terms are used in accordance with 36 CFR 800.16; and

NOW, THEREFORE, all of the Consulting Parties agree that the Project shall be administered in accordance with the following stipulations:

STIPULATIONS

The BLM will ensure that the following measures will be carried out:

1. BLM shall coordinate overall actions required under this Agreement as specified herein.
2. Enel will fund all cultural resources fieldwork, analysis, monitoring, reporting, curation, and other mitigation required under this Agreement.
3. BLM will continue to consult with appropriate Indian Tribes regarding historic properties of religious and cultural significance in accordance with the National Historic Preservation Act (NHPA).
4. BLM will ensure that all work undertaken to satisfy the terms of this Agreement meets the Secretary of the Interior's Standards and Guidelines for Archaeological and Historic Preservation (48 FR 44716-77442, September 23, 1983) (hereafter "Secretary's Standards") and takes into consideration the ACHP's Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites, May 1999, Section 106 Guidance (at: <http://www.achp.gov/archguide/>), and Guidelines for Evaluating and Documenting Traditional Cultural Properties, *National Register Bulletin* 38, 1989, as incorporated by reference herein.
5. BLM will ensure that work performed to satisfy this Agreement is carried out by a permitted cultural resource contractor who meets the applicable professional qualifications standards set forth in the Secretary's Standards. BLM will also ensure that the terms of this agreement are carried out in accordance with any existing BLM guidelines for cultural resources (prehistoric or historic).

6. Identification of historic properties.

- a. *Area of Potential Effects (APE)*. The APE is situated around the remains of the historic town of Sulphurdale, which is south of Interstate-70 and east of Interstate-15 (see Appendix B). The APE is located on private land, USFS-system lands, and BLM-administered land.

The APE was designed to include all potential activities for this project that might result in the destruction, isolation, or alteration of all or part of any historic property. This includes ground disturbing activities for the construction of the power generation station, substation, power line, water lines, wells, access roads, and any other ancillary facility. The APE was also designed to cover the potential for the introduction of visual and audible elements that may alter the setting of a historic property.

The APE was also designed to address any potential adverse effects to known historic properties and to previously unrecorded prehistoric and historic site types that are expected to exist in the general area.

- b. *Class I Cultural Resources Inventory*. The Class I will assist the BLM in the identification of the known prehistoric, historic, and traditional cultural properties within the APE. The Class I will also provide expectations for unknown cultural resource site types and densities. This information will be used to assist the BLM in making determinations of eligibility and to provide a framework for directing the fieldwork for the Class III inventory.

Class I inventory data will include but is not limited to: archaeological and site files maintained by BLM and by the Utah Division of State History, ethnographic reports, General Land Office maps, current United States Geological Survey maps, the National Register of Historic Places, published historical documents and historic and recent archaeological research for the area.

- c. *Class III Cultural Resources Inventory*. Using information gathered in the Class I, a Class III inventory will be conducted to identify historic properties. The Class III will also identify any potential adverse effects to historic properties. The Class III inventory will be conducted where potential ground disturbance will occur and where the BLM recommends additional inventory or site recording. In general, the Class III will be conducted by the cultural resource contractor archaeologists walking 15-meter wide, parallel transects.

Identification efforts in the Class III will include potential rerecording of previously recorded sites and the recordation of newly discovered prehistoric, historic, architectural and traditional cultural properties. All archaeological sites identified will be recorded on IMACS site forms to BLM standards.

7. Reporting

- a. Upon completion of Class III inventory, a Class III Cultural Resources Inventory Report will be prepared. This report will describe the cultural resources inventory effort as a whole, describe the inventory methods used, provide the results of both Class I and Class III inventories, and make recommendations for the National Register of Historic Places (NRHP) eligibility of all historic localities discovered or revisited.
- b. Draft Class III Cultural Resources Inventory Reports will be submitted to BLM. BLM and USFS will have 30 calendar days to provide comments.
- c. BLM will provide Consulting Parties with an opportunity to review and comment on Class III Cultural Resources Inventory Reports prior to agency submission to SHPO. Consulting Parties will have thirty calendar days to provide comments to BLM.
- d. A Final Class III Cultural Resources Inventory Reports that consider comments made by BLM and USFS will be submitted to BLM and USFS.
- e. The Final Class III report will be sent to SHPO for a 30 calendar day review period.
- f. 120 days after completion of the treatment activities a complete treatment or mitigation report will be sent to the BLM and USFS (see Stipulation 8). BLM and USFS will have 45 calendar days to provide comments. A final copy will be sent to the SHPO for a 30 calendar day comment period.

8. National Register of Historic Place Eligibility Determinations

- a. BLM is responsible for all National Register of Historic Places (NRHP) eligibility determinations. BLM will seek concurrence on eligibility with the SHPO.
- b. BLM will evaluate the historic significance of sites within the APE pursuant to 36 CFR 800.4(c).

9. Historic Properties Treatment Plan

- a. A Historic Properties Treatment Plan (HPTP) will be developed and implemented that addresses adverse effects of the Project to historic properties; including prehistoric and historic archaeological sites, historic architecture, and Traditional Cultural Properties. The HPTP will identify the nature of the effects to which each historic property will be subjected and the proposed treatment to avoid, minimize, or mitigate adverse effects.

The HPTP will also identify those sites where a phased approach of mitigation would be appropriate. This method may include mechanical scraping of topsoil

with archaeological monitors present. The HPTP will outline the details of required excavation methods if subsurface features are found during mechanical scraping.

If data recovery excavation is proposed as a mitigation measure, the HPTP may not be implemented until required state and federal excavation permits have been issued by BLM and/or the Utah Public Lands Policy Coordination Office.

- b. A monitoring plan and inadvertent discoveries plan will be developed and included as part of the HPTP. The HPTP will identify those areas that will be monitored. Cultural resources discovered during Project activities will be treated in accordance with the inadvertent discoveries plan.
- c. All Signatories, Invited Signatories and Consulting Parties will be invited to send representatives to a meeting with BLM and USFS prior to submission of an initial draft HPTP. The purpose of this meeting will be to discuss historic property treatment recommendations.
- d. A draft HPTP will be submitted to BLM and USFS for distribution to all Invited Signatories and Consulting Parties. Invited Signatories and Concurring Parties will have 30 calendar days from receipt of the draft HPTP to provide comments to BLM and USFS.
- e. A final HPTP that takes into consideration comments made by Invited Signatories and Consulting Parties will be submitted to BLM and USFS for distribution to all parties. Invited Signatories and Consulting Parties will have 14 calendar days from receipt of the final HPTP to provide comments to the BLM. If a party does not submit comments within 14 calendar days of receipt of the final HPTP, BLM may assume that they have no objection to the adequacy of the plan.
- f. The final HPTP, revised as necessary, will be submitted to SHPO for comment. SHPO will have 30 calendar days from receipt to provide comments to BLM. If SHPO does not submit comments within 30 calendar days of receipt, BLM may assume that SHPO has no objection to the adequacy of the plan.

10. Project Authorization

- a. As lead Federal Agency BLM may allow Enel to begin operations in those portions of the lease area that do not contain historic properties or Traditional Cultural Properties.
- b. BLM may allow Enel to begin construction in those portions of the project that do contain historic properties once the agreed-upon fieldwork and treatment as specified in the HPTP is completed and approved by BLM and USFS. BLM and USFS will have 7 days from receipt of adequate documentation (i.e. letter report) that fieldwork and treatment is complete to comment.

- c. Authorization for treatment and/or construction will only occur subsequent to Enel having been issued the proper federal authorizations.

11. Human remains.

- a. *Discovery Notification.* If human remains, potential human remains, associated or unassociated funerary objects, or objects of cultural patrimony are discovered, work within 100 feet of the discovery will stop immediately. Verbal notification of the discovery will be made immediately to local law enforcement authorities, the appropriate land management agency official, and the Antiquities Section of the Utah Division of State History.
- b. *Assessment of Remains.* Human remains discovered on federally managed land will be treated consistent with all requirements of NAGPRA and its implementing regulations at 43 CFR 10. Human remains discovered on State, SITLA, or privately owned land will be treated consistent with all requirements of applicable Utah State Laws regarding the treatment of human remains including Utah Code Annotated (UCA) 76-9-704, UCA 9-8-302, UCA 9-8-309, and UCA 9-9-401 et seq.
- c. *Resumption of Work.* Work in the immediate vicinity of the human remains may not resume until after the disposition of the human remains is determined. Permission to proceed will come from the BLM, after appropriate consultation with the Antiquities Section of the Utah Division of State History and appropriate Tribal representatives.

12. Protection of confidential information.

- a. BLM shall ensure that all confidential information, as defined in Section 9 of the ARPA, Section 304 of the NHPA, and Section 63-2-304(26) of the Government Records Access Management Act (GRAMA) is managed in such a way that historic properties, archaeological resources, traditional cultural values, and sacred objects are not compromised, to the fullest extent available under law.
- b. All parties to this Agreement shall safeguard information about the nature and location of archaeological, historic, and traditional cultural properties, pursuant to Section 9 of the ARPA, Section 304 of the NHPA, and Section 63-2-304(26) of the GRAMA.

13. Dispute resolution.

- a. Should any Signatory or Consulting Party to this Agreement object, in writing, at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the BLM shall consult with the objecting party to

resolve the concern within 45 days. If the BLM determines that the concern cannot be resolved, the BLM shall:

- i. Forward all documentation relevant to the dispute, including the BLM's proposed resolution to the ACHP. The ACHP may provide the BLM with its advice on the resolution of the concern within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP or Consulting Parties to this Agreement, and provide them with a copy of this written response. The BLM will then proceed according to its final decision.
- ii. The BLM's responsibility to carry out all other actions subject to the terms of this Agreement that are not subject of the dispute will remain unchanged.

14. Amendments.

- a. Any Signatory to this Agreement may request that it be amended, whereupon the Signatories of this Agreement will consult to consider such amendment. An amendment will become effective upon written agreement by all Signatories of this Agreement. Notification of any amendments will be sent to the Consulting Parties.

15. Termination.

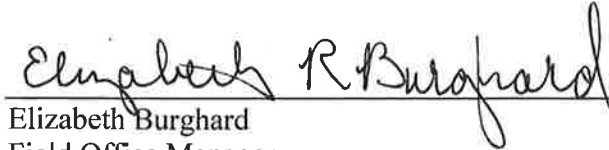
- a. Any Signatory to this Agreement may terminate it by providing 30 calendar days' notice, in writing, to the other Signatories, provided that the Signatories will consult during the period prior to termination to seek agreement on amendments or other actions that will avoid termination. In the event of termination, the BLM and other Signatories will comply with 36 CFR 800.1 et seq. with regard to individual actions covered by this Agreement. Notification of termination will be sent to the Consulting Parties.

16. Term.

This Agreement will expire if its terms are not carried out within 10 years from the date of its execution. Prior to such time, BLM may consult with the other signatories to reconsider the terms of the Agreement and amend it in accordance with Stipulation 14. Execution of this Agreement by the Signatories and implementation of its terms show that the BLM has taken into account the effects of this Project to historic properties.

SIGNATORIES

Bureau of Land Management, Cedar City Field Office


Elizabeth Burghard
Field Office Manager

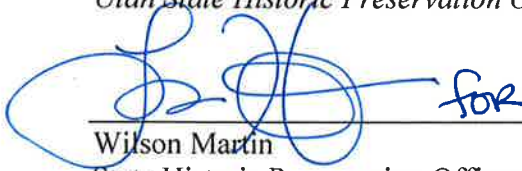
10-17-12
Date

United States Forest Service, Fishlake National Forest


Allan Rowley
Forest Supervisor

10/18/2012
Date

Utah State Historic Preservation Officer


Wilson Martin
State Historic Preservation Officer

10.19.12
Date

INVITED SIGNATORIES

Enel Cove Fort, LLC


William Price
Vice President of Engineering & Construction

10/17/12
Date

CONSULTING PARTIES

Utah Public Lands Policy Coordination Office

A handwritten signature in blue ink, appearing to read 'K. Clarke', written over a horizontal line.

Kathleen Clarke
Director

10/19/2012
Date

APPENDIX A

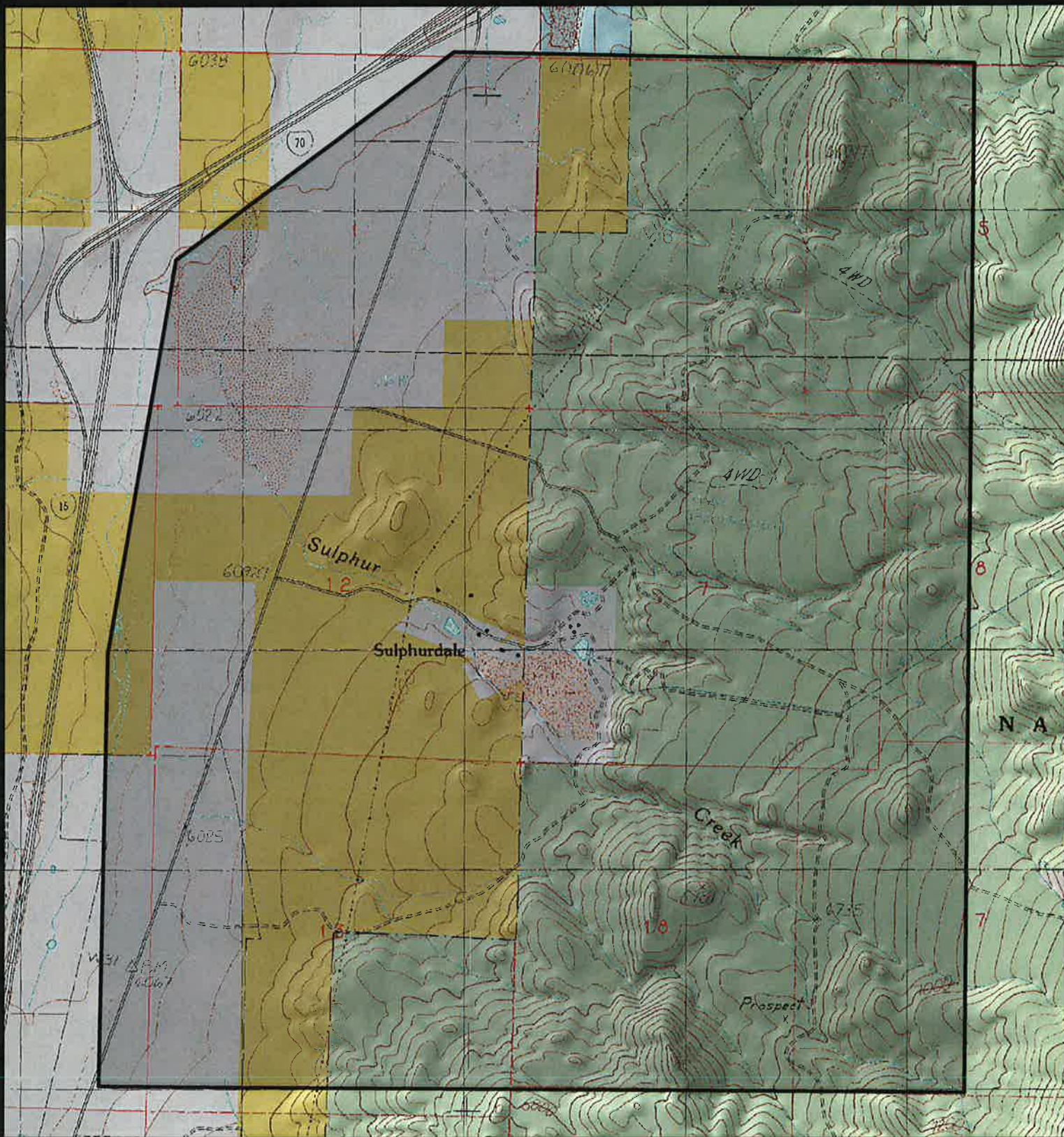
ENEL COVE FORT PROJECT TRIBAL CONSULTATION SUMMARY

In accordance with the Tribal consultation responsibilities outlined in 36 CFR Part 800, the Bureau of Land Management (BLM) conducted consultation with the Paiute Indian Tribe of Utah early and continually through the Section 106 process. While no American Indian reservations or lands owned in fee by the Tribe are within the Cove Fort Project (Project), the BLM recognizes the entire Cedar City Field Office as a traditional area for the Paiute Indian Tribe of Utah. The consultation with the Paiute Indian Tribe of Utah is as follows:

- On July 13, 2010, Rachel Tueller, BLM Tribal Consultation Representative met in person with Dorena Martineau, Tribal Cultural Resources Director to review the draft Plan of Utilization for the Project. The Tribe reviewed the project and had no objection to the project going forward. They requested that they be informed of any changes or updates to the project. No Traditional Cultural Properties or areas of concern were identified by the Tribe. The Tribe requested additional consultation if cultural resources were discovered during the cultural resource inventory for the project.
- On January 30, 2012, Nathan Thomas, BLM Archaeologist met in person with Dorena Martineau, to review changes to the Plan of Utilization. The Tribe reviewed the project and had no objection to the project going forward. The requested that they be informed of any changes or updates to the project. No Traditional Cultural Properties or areas of concern were identified by the Tribe.
- In September of 2012 Nathan Thomas, BLM Archaeologist extended the invitation to the Paiute Indian Tribe of Utah to participate as a consulting party to this Agreement. The Tribe did not wish to participate in the agreement, but requested copies of the cultural resource reports. No Traditional Cultural Properties or areas of concern were identified by the Tribe.

Consultation with the Paiute Indian Tribe of Utah will continue under the Tribal consultation provisions outlined in this Agreement.

Consultation with the Hopi Tribe is ongoing. In October 2012, the Hopi reaffirmed their position that they do not usually participate in Programmatic Agreements. The Hopi Tribe requested consultation on the Historic Properties Treatment Plan. The BLM recognizes the entire Cedar City Field Office as a traditional area for the Hopi Tribe. Consultation with the Hopi Tribe will continue under the Tribal consultation provisions outlined in this Agreement.



Area of Potential Effect

Land Status

- Bureau of Land Management
- Private
- State
- US Forest Service

Map Scale 1:24,000



This product may not meet BLM standards for accuracy and content. Different data sources and input scales may cause some misalignment of data layers.

Projection: UTM, Zone 12 North
 Datum: North American Datum of 1983 (NAD83)
 Cedar City Field Office, GIS
 September 13, 2012

